

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Johann Magg et al.
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Confirmation No.: 5391
Examiner: Reginald Alexander
Title: COFFEE MACHINE WITH A CONTINUOUS FLOW
HEATER

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Commissioner for Patents
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APPEAL BRIEF

Pursuant to 37 CFR §41.37, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR §41.20(b)(2).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1-13 are cancelled. Claims 14-31 are pending in this application. The final rejection of claims 14-31 is being appealed. Claim 14 is independent.

(4) STATUS OF AMENDMENTS

In response to the Office Action dated November 6, 2009, Appellants filed an Amendment A dated February 5, 2010, traversing the rejections, making an amendment to claim 16, and adding claims 30 and 31. Although the April 7, 2010, Final Office Action does not specifically state that Amendment A was entered, Appellants believe it was. No Amendments are outstanding. Appellants filed a Notice of Appeal on June 3, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 14, is directed to a coffee machine (page 5, lines 22-26; reference number 10, Figs. 1,2) for preparing coffee using coffee pads (page 5, line 29), which comprises a continuous flow heater (page 6, line 9; reference number 38, Figs. 2,3) secured in a housing (page 3, lines 11-

12; reference number 14, Figs. 1,2) with a pipe for guiding water (page 6, line 10; reference number 40, Figs. 1-3), which has a flexible tube connecting piece at one end (page 7, lines 7-15; reference number 66, 68, Figs. 1-3), the flexible tube connecting piece including receiving elements (page 7, lines 9-15; reference number 84, 86, Fig. 3) for integrating additional components of the coffee machine. Additional receiving elements for additional components are provided as part of the additional securing means shown in the figures, but not labeled with reference numbers (page 7, lines 11-12).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether the claims 14-16, 18-27 and 29-31 are unpatentable under 35 U.S.C. §102(e) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference)
- B) Whether the claim 17 is unpatentable under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference) in view of U.S. Patent No.6,766,106 (the Roberson reference)
- C) Whether the claim 28 is unpatentable under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference)

(7) ARGUMENT

- A) Claims 14-16, 18-27 and 29-31 are patentable under 35 U.S.C. §102(e) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference)

The Office Action rejects claims 14-16, 18-27 and 29-31 under 35 U.S.C. §102(e) over

the Fanzutti reference. Applicants respectfully traverse this rejection.

i) Claims 14, 15, 18, 21, 25

Claim 14 includes the feature of a flexible tube connecting piece at one end of a continuous flow heater, the flexible tube connecting piece including receiving elements for integrating additional components of the coffee machine. In contrast, the Office Action defined flexible tube connecting piece (top end cap 138) of Fanzutti does not have elements for integrating additional components. At most, top end cap 138 has a single receiving element for integrating a single component. The Office Action asserts that thermal cut off 124 of Fanzutti corresponds to one of the claimed “additional components”. However, thermal cut off 124 cannot correspond to one of the “additional components” of claim 14 because thermal cut off 124 is not integrated by a receiving element that is included in a flexible tube connecting piece that is at one end of a continuous flow heater. Thermal cut off 124 is held in place by clip 126, which is clearly not at one end of a continuous flow heater and is clearly not integrated by a receiving element that is included in a flexible tube connection piece.

Claims 15, 18, 21 and 25 depend from claim 14.

ii) Claims 19 and 30

Claim 19 includes the feature of the flexible tube connecting piece including a securing means for securing the continuous flow heater in the housing. In contrast, the Office Action defined securing means (shield members 120, 122) of Fanzutti are not included in the Office Action defined flexible tube connecting pieces (end caps 136, 138). Also, Applicants could not find any reference in Fanzutti as to how shield members 120, 122 secure anything to a housing.

Claim 30 depends from claim 19.

iii) Claims 20 and 31

Claim 20 includes the feature of the securing means including additional receiving elements for integrating additional components of the coffee machine. In contrast, the Office Action defined securing means (shield members 120, 122) of Fanzutti do not have any additional receiving elements for integrating additional components. The Office Action defined additional receiving elements (clips 126, 130) are not included in shield members 120, 122.

Claim 31 depends from claim 20.

iv) Claims 22-24 and 16

Claim 22 includes the feature of a heating rod thermally connected to the pipe of the continuous flow heater by means of at least one flat contact surface. In contrast, the Office Action defined heating rod (heating element 142) is not connected to the Office Action defined pipe (tube 140) by a flat contact surface. Figure 4 clearly shows that heating elements 142 are thermally connected to tube 140 by way of the tubular outer surface of tube 140 contacting the round surfaces of blocks 144 and then the tubular inner surfaces of blocks 144 contacting the tubular outer surfaces of heating elements 142. None of these surfaces are flat.

Claims 23, 24 and 16 depend from claim 22.

v) Claim 26

Claim 26 includes the feature of the flexible tube connecting piece comprising sealing means which abut against an inner wall of the pipe. In contrast, end caps 136, 138 of Fanzutti do not abut against an inner wall of tube 140. Tube fittings 132, 134, not ends caps 136, 138, are connected to tube 140 (paragraph 0054). In addition, nothing in Fanzutti appears to be abutting an inner wall of tube 140.

vi) Claim 27

Claim 27 includes the feature of the sealing means being formed by an O-ring seal

inserted in an annular groove on the outer circumference of the flexible tube connecting piece. In contrast, Fanzutti shows no annular groove on the outer circumference of either end cap 136, 138. Further, it would make no sense to place a seal in an annular groove on an outer circumference of either end cap 136, 138 because such a seal would not be in contact with tube 140.

vii) Claim 29

Claim 29 includes the feature of the flexible tube connecting piece having a substantially conical shape. In contrast, no piece of end caps 136, 138 has a substantially conical shape.

Applicants respectfully request reversal of this rejection.

B) Claim 17 is patentable under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference) in view of U.S. Patent No.6,766,106 (the Roberson reference)

The Office Action rejects claim 17 under 35 U.S.C. §103(a) over the Fanzutti reference in view of the Roberson reference. Applicants respectfully traverse this rejection.

i) Claim 17

As explained above, Fanzutti does not teach or suggest the feature of a flexible tube connecting piece at one end of a continuous flow heater, the flexible tube connecting piece including receiving elements for integrating additional components of the coffee machine. Roberson does not remedy the deficiencies of Fanzutti.

Indeed, the Examiner does not allege that Roberson teaches or suggests the feature of a flexible tube connecting piece at one end of a continuous flow heater, the flexible tube connecting piece including receiving elements for integrating additional components of the coffee machine, as recited in independent claim 14, from which claim 17 depends.

Applicants respectfully request reversal of this rejection.

- C) Claim 28 is patentable under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2003/0066431 (the Fanzutti reference)

The Office Action rejects claim 28 under 35 U.S.C. §103(a) over the Fanzutti reference. Applicants respectfully traverse this rejection.

- i) Claim 28

Claim 28 includes the feature of at least two axially spaced O-ring seals being provided on the flexible tube connecting pieces. Claim 28 depends from claim 26. As stated above, tube fittings 132, 134, not ends caps 136, 138, are connected to tube 140 (paragraph 0054). As a result, it would make no sense to put O-rings on end caps 136, 138 and it would not have been obvious to do so.

Applicants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

Claims 1 - 13 (Canceled)

14. (Rejected) A coffee machine for preparing coffee using coffee pads, which comprises a continuous flow heater secured in a housing with a pipe for guiding water, which has a flexible tube connecting piece at one end, the flexible tube connecting piece including receiving elements for integrating additional components of the coffee machine.

15. (Rejected) The coffee machine according to claim 14, further comprising a safety valve as an additional component.

16. (Rejected) The coffee machine according to claim 24, further comprising a temperature sensor mounted to the sleeve.

17. (Rejected) The coffee machine according to claim 14, further comprising a reed switch as a water level sensor as an additional component.

18. (Rejected) The coffee machine according to claim 14, wherein the flexible tube connecting piece is made from a high-temperature resistant plastic material.

19. (Rejected) The coffee machine according to claim 14, wherein the flexible tube connecting piece includes a securing means for securing the continuous flow heater in the housing.

20. (Rejected) The coffee machine according to claim 19, wherein the securing means includes additional receiving elements for integrating additional components of the coffee machine.

21. (Rejected) The coffee machine according to claim 18, further comprising at least one of a safety valve, a temperature sensor, and a reed switch as a water level sensor as an additional component.

22. (Rejected) The coffee machine according to claim 14, further comprising a heating rod thermally connected to the pipe of the continuous flow heater by means of at least one flat contact surface.

23. (Rejected) The coffee machine according to claim 22, further comprising at least two heating rods thermally connected to the pipe of the continuous flow heater by means of at least one flat contact surface.

24. (Rejected) The coffee machine according to claim 23, wherein the arrangement of the pipe and heating rods is held together by a sleeve.

25. (Rejected) The coffee machine according to claim 21, further comprising a temperature sensor disposed on the sleeve.

26. (Rejected) The coffee machine according to claim 14, wherein the flexible tube connecting piece comprises sealing means which abut against an inner wall of the pipe by which means the flexible tube connecting piece is connected to the ends of the pipe in a sealed manner.

27. (Rejected) The coffee machine according to claim 26, wherein the sealing means is formed by an O-ring seal inserted in an annular groove on the outer circumference of the flexible tube connecting piece.

28. (Rejected) The coffee machine according to claim 27, wherein at least two axially spaced O-ring seals are provided on the flexible tube connecting pieces.

29. (Rejected) The coffee machine according to claim 14, wherein the flexible tube connecting piece has a substantially conical shape and is inserted in a corresponding conical end of the pipe.

30. (Rejected) The coffee machine according to claim 19, wherein the securing means secures the continuous flow heater in the housing in a position where the continuous flow heater is securely held at least a predetermined distance from other components of the coffee machine.

31. (Rejected) The coffee machine according to claim 20, wherein the securing means secures the continuous flow heater in the housing in a position where the continuous flow heater is securely held at least a predetermined distance from other components of the coffee machine.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None